

CJF/kle: 01/24/18

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
(WHEELING DIVISION)**

BROOKE COUNTY COMMISSION,  
HANCOCK COUNTY COMMISSION,  
HARRISON COUNTY COMMISSION,  
LEWIS COUNTY COMMISSION,  
MARSHALL COUNTY COMMISSION,  
OHIO COUNTY COMMISSION,  
TYLER COUNTY COMMISSION, and  
WETZEL COUNTY COMMISSION,

Plaintiffs,

vs.

PURDUE PHARMA L.P.; PURDUE PHARMA  
INC.; THE PURDUE FREDERICK  
COMPANY, INC.; MARK RADCLIFFE;  
MARK ROSS; PATTY CARNES; TEVA  
PHARMACEUTICALS USA, INC.;  
CEPHALON, INC.; JANSSEN  
PHARMACEUTICALS, INC.; ORTHO-  
MCNEIL-JANSSEN PHARMACEUTICALS,  
INC. n/k/a Janssen Pharmaceuticals, Inc.;  
JANSSEN PHARMACEUTICA, INC. n/k/a  
Janssen Pharmaceuticals, Inc.; JOHNSON &  
JOHNSON; ENDO HEALTH SOLUTIONS  
INC.; ENDO PHARMACEUTICALS, INC.;  
ALLERGAN plc; ACTAVIS plc; ACTAVIS,  
INC.; ACTAVIS LLC; ACTAVIS PHARMA,  
INC.; WATSON PHARMACEUTICALS, INC.;  
WATSON PHARMA, INC.; WATSON  
LABORATORIES, INC.; MCKESSON  
CORPORATION; CARDINAL HEALTH,  
INC.; AMERISOURCEBERGEN DRUG  
CORPORATION; RITE AID OF  
MARYLAND, INC.; KROGER LIMITED  
PARTNERSHIP II; CVS INDIANA, L.L.C.;  
WAL-MART STORES EAST, LP; GOODWIN  
DRUG COMPANY; WEST VIRGINIA  
BOARD OF PHARMACY; DAVID  
POTTERS; EDITA P. MILAN, M.D.;  
TRESSIE MONTENE DUFFY, M.D.;  
EUGENIO ALDEA MENEZ, M.D.;  
SCOTT JAMES FEATHERS, D.P.M.; and  
AMY LYNN BEAVER, P.A.-C,

Defendants.

Civil Action No. 5:18-cv-9  
Civil Action No. 5:18-cv-10  
Civil Action No. 5:18-cv-11  
Civil Action No. 5:18-cv-12  
Civil Action No. 5:18-cv-13  
Civil Action No. 5:18-cv-14  
Civil Action No. 5:18-cv-15  
Civil Action No. 5:18-cv-16

Judge John Preston Bailey

**PLAINTIFFS' EMERGENCY MOTION TO REMAND**

COMES NOW, the Plaintiffs, Brooke County Commission, Hancock County Commission, Harrison County Commission, Lewis County Commission, Marshall County Commission, Ohio County Commission, Tyler County Commission, and Wetzel County Commission, (hereinafter collectively "Plaintiffs") and hereby submit their Emergency Motion to Remand. For the reasons set forth herein, this Court lacks subject matter jurisdiction over this action and this case should be immediately remanded to the Circuit Court of Marshall County, West Virginia. As grounds for this Motion, your movants state as follows:

1. The instant case is of significant local importance. Brooke County, Hancock County, Harrison County, Lewis County, Marshall County, Ohio County, Tyler County, and Wetzel County, like much of the United States, are in the midst of an opioid epidemic that threatens and harms the well-being of their citizens.

2. Plaintiffs instituted the underlying civil action in the Circuit Court of Marshall County, West Virginia on December 28, 2012.

3. In their Complaint, Plaintiffs seek to abate the public nuisance caused by the opioid epidemic in their respective counties, and to recoup monies and costs they have spent because of Defendants' false, deceptive and unlawful marketing, unlawful distribution, and/or unlawful diversion of prescription opioids.

4. Plaintiffs bring this action against five classes of Defendants - all of whom have caused and/or contributed to the occurrence of the opioid epidemic in their counties: (1) the Manufacturer Defendants, (2) the Purdue Sales Representative Defendants, (3) the Distributor Defendants, (4) the West Virginia Board of Pharmacy (hereinafter "BOP") and its former Executive Director, David Potters, and (5) the Doctor Defendants. (Compl., ¶ 46.)

5. On January 19, 2018, Defendants removed this case to federal court alleging diversity jurisdiction under 28 U.S.C. § 1332. In their Notice, Defendants assert various dubious theories of federal jurisdiction – none of which have any merit.

6. Jurisdiction under 28 U.S.C. § 1332 does not exist in the present case because there is not complete diversity between the parties. Plaintiffs have sufficiently asserted legally proper claims against 10 non-diverse defendants and Plaintiffs' claims are all properly joined pursuant to Rule 20 of the Federal Rules of Civil Procedure. And the laws of the State of West Virginia, this District, and the Fourth Circuit are dispositive of the jurisdictional issues.

7. The reason behind Defendants' improper and hasty removal is obvious: Defendants are attempting to divest this Court of its duty to determine whether federal jurisdiction is appropriate and have this case transferred to the Circuit Court for the Northern District of Ohio where a federal MDL is pending regarding the improper marketing of and inappropriate distribution of various prescription opiate medications into cities, states and towns across the country. *In re Nat'l Prescription Opiate Litig.*, No. MDL 2804, 2017 WL 6031547, at \*1 (U.S. Jud. Pan. Mult. Lit. Dec. 5, 2017).

8. On January 22, 2018, Defendants designated this case as a tag-along action to the federal Opioid MDL. On January 24, 2018, the JPML issued a Conditional Transfer Order ("CTO") in this case, conditionally transferring this case to the MDL pending in the Northern District of Ohio. The CTO has not been entered in the MDL, and this Court still retains jurisdiction to hear Plaintiffs' Motion to Remand. Plaintiffs intend on filing an objection to the CTO with the JPML.

9. If this case is transferred to the MDL, Plaintiffs would be severely prejudiced. The MDL Court has indicated that it is not going to rule on any pending motions to remand at

the present time. (*See* Transcript of Telephonic Proceedings, In Re National Prescription Opiate Litigation, Case No. 1:17CV2804, December 13, 2017, p. 15:12-14, 22:15-21, 44:11-17, attached hereto as Exhibit 1.) Thus, if the Court does not immediately rule upon the instant action, Plaintiffs will be forced to litigate their case in federal court where there is clearly no federal jurisdiction and will be deprived the opportunity to exercise their rights to have their case heard in State court.

10. Plaintiffs hereby request an expedited briefing schedule and oral argument, if the Court deems it necessary.

11. In support of their Motion, Plaintiffs hereby incorporate by reference their Memorandum of Law in Support of Plaintiffs' Emergency Motion to Remand as if it were fully set forth herein.

12. Plaintiffs' Motion to Remand is being filed pursuant to 28 U.S.C. § 1447(c) within thirty days after the filing of Defendants' Notice of Removal.

**WHEREFORE**, Plaintiffs respectfully requests that this Court remand this case to the Circuit Court of Marshall County, West Virginia for lack of subject matter jurisdiction. Plaintiffs request an expedited briefing schedule and hearing on their Motion together with such other and further relief as this Court deems just and proper, including an award of attorney fees and costs, if appropriate.

Respectfully Submitted,

**BROOKE COUNTY COMMISSION, HANCOCK  
COUNTY COMMISSION, HARRISON COUNTY  
COMMISSION, LEWIS COUNTY COMMISSION,  
MARSHALL COUNTY COMMISSION, OHIO COUNTY  
COMMISSION, TYLER COUNTY COMMISSION, and  
WETZEL COUNTY COMMISSION, *Plaintiffs***

By: /s/ Clayton J. Fitzsimmons

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Judge John Preston Bailey

**CERTIFICATE OF SERVICE**

The undersigned counsel for Plaintiffs hereby certifies that on January 24, 2018, a true copy of the foregoing document was electronically filed with the Clerk of this Court using the CM/ECF system, who shall provide electronic notice of such filing to the counsel of record.

Respectfully Submitted,

**BROOKE COUNTY COMMISSION, HANCOCK  
COUNTY COMMISSION, HARRISON COUNTY  
COMMISSION, LEWIS COUNTY COMMISSION,  
MARSHALL COUNTY COMMISSION, OHIO COUNTY  
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